

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

January 12, 2007

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

06od-190

Oahu

Sale of Reclaimed Land to Erich J. Wida and Catherine D.  
Wida, Kaneohe, Oahu, Tax Map Key: 4-4-37:05, seaward.

APPLICANTS:

Erich J. Wida and Catherine D. Wida, as tenants by the entirety,  
whose mailing address is 44-543B Kaneohe Bay Drive, Kaneohe,  
Hawaii 96744.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe situated at Kaneohe,  
Koolaupoko, Oahu, identified by Tax Map Key: 4-4-37:05, seaward,  
as shown on the attached map labeled Exhibit A.

AREA:

43 square feet of seawall and filled land, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO  x

CURRENT USE STATUS:

Unencumbered with encroachments.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Not applicable. The applicants as landowners are not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Provide documentation that he/she is the owner of the property abutting the subject reclaimed land;
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the reclaimed land;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

The applicants, who are the new owners of the abutting property, need a shoreline certification in order to meet one of the City and County building permit requirements. They had a survey map prepared (see Exhibit B) and a shoreline encroachment in the form of a seawall and filled land was discovered as acknowledged by their surveyor by letter dated September 22, 2006. They then submitted the documents to the Office of Conservation and Coastal Lands (OCCL) for review of the shoreline encroachment. On October 12, 2006, the OCCL responded by writing that they had no objections to a disposition request being processed (see Exhibit C). OCCL confirmed that the 1955 and 1961 aerial photos provided evidence of the wall, thus it was constructed prior to 1962.

Mr. and Mrs. Wida are requesting to purchase the reclaimed land based on the evidence that the seawall construction date was prior to 1962 thus qualifying for the choice of the purchase.

A request for comments was made to various agencies. The Dept. of Hawaiian Homes Lands responded by indicating they had no comment and Office of Hawaiian Affairs added as long as the applicant pays fair market rent.

It is the Board's policy to require a deposit for the purchase of the reclaimed lands before moving forward to process a shoreline certification application. In the past, shoreline certifications or other approvals were given prior to the applicant resolving the encroachment problem. This made it difficult for staff to compel the applicants who later refused to execute the conveyance documents and make the requested payment. Therefore, staff is recommending requiring a deposit in the estimated amount to purchase the reclaimed lands.

The Appraisal Section has estimated the sale consideration deposit to be \$2,550. With documentation fees, the total estimated deposit amount is \$2,605. The actual consideration will be determined by a full appraisal. Upon execution of the legal documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposited amount ends up being more than the appraised value to purchase the reclaimed lands, then the applicants will be reimbursed the difference. If the deposit is not sufficient to cover the actual appraised value, then the applicants must pay the difference. In the event the applicants fail to consummate the purchase of the reclaimed lands and resolve the encroachment problem, then the applicants will be required to remove the encroachments to the satisfaction of the Department.

Following the purchase of the reclaimed land, the grantee will be required to consolidate the reclaimed land with the grantee's abutting property through the county subdivision process.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff is recommending waiving the fine of \$500, as the subject encroachment is less than 100 square feet.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Waive the \$500 fine for illegal encroachment, under Section 171-6(12).


2. Find that the sale of the subject, reclaimed land is not prejudicial to the best interest of the State, community or area in which subject reclaimed land is located.
3. Authorize the sale of the subject reclaimed land to Erich J. Wida and Catherine D. Wida covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The Grantee shall consolidate the reclaimed land with the Grantee's abutting property through the county subdivision process;
  - b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Require the applicant to deposit with the Department the sum of \$2,605.00 for the estimated value for the purchase of the reclaimed lands pursuant to the conditions set forth in the Remarks section above.

Respectfully Submitted,



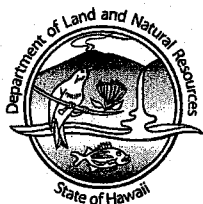
Al Jodar  
Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DE

October 12, 2006

Encroachment: OA-07-03

Mr. and Mrs. Erich Wida,  
44-543 Kaneohe Bay Dr.  
Kaneohe, HI 96744

Dear Mr. and Mrs. Wida:

Subject: Shoreline Encroachment (pier and seawall) Review, 44-543 Kaneohe Bay Dr. Kaneohe, Hawaii, TMK: (1) 4-4-37:05

The Office of Conservation and Coastal Lands (OCCL) staff has reviewed the submitted documentation and researched aerial photos for this case. The encroachment in question is a portion of a seawall and pier, located Makai of your property line. According to the submitted survey map by Walter P. Thomson (1994) the total area of the encroachment is approximately 245 square feet (Figure 1).

An aerial photograph dated 1955 submitted by you to our office reveals the presence of what appears to be the subject improvements. A 1961 aerial photograph on file with the Department confirms the presence of a pier and seawall.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages;  
and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

**EXHIBIT "B"**

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of OCCL staff. Based on the information provided the Department has made the following determinations with regard to the subject improvements:

Surrounding Land Uses:

The surrounding uses are residential and commercial, a marina is adjacent to the east.

Beach Resources:

The tidal area is a rocky coast and intertidal mudflats composed of filled lands from historically dredged material with little to no recreational sand resources. The area is subject to tidal forces and is not an open coastline with typical wave action. Water quality is fair to poor due to non-point source pollution and soil runoff. A large commercial marina is adjacent to the subject property.

Public Access:

There is no public access to the shoreline at the subject property. The subject improvements do not reduce (or enhance) access to the water fronting the parcel and thus are negligible.

Effect of Removing the Encroachment on:

*Beach Resources:* The removal of the encroachment would have negligible impact on public shoreline access. Public recreation such as fishing, diving and boating takes place offshore of the parcel with little to no recreational shoreline activities. The subject improvements appear to have no significant impact on the shoreline resources and provide improved access for the landowner to the ocean.

*Public Access:* OCCL staff has determined that public access would not be enhanced by removal of the encroachment(s). Removal of the improvements would not enhance public access.

*Affect on Adjacent Properties:* Removal of the dock would have negligible effect on the surrounding parcels. The removal of the seawall may lead to increased coastal erosion and may threaten neighboring properties by flanking erosion.

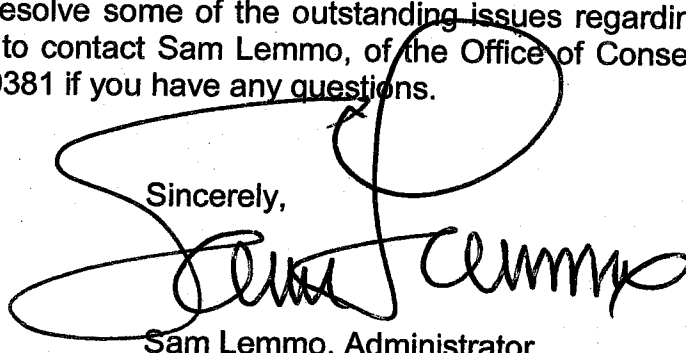
Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachments to remain through the issuance of an easement for the improvements would have no adverse impacts on natural resources, including beach resources. **Therefore, the OCCL has no objections to an easement request being processed.**

Pursuant to Chapter 171, you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment.

**Please contact the State of Hawaii, DLNR, Land Division at (808) 587-0419 regarding the processing of an easement.** If you do not pursue an easement, you will be required to remove the encroachment. For regulatory purposes, you should also contact the City and County Department of Planning and Permitting for any future development or improvement activities within the SMA area.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0381 if you have any questions.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Sam Lemmo', is written over the word 'Sincerely,' and extends below the name.

Sam Lemmo, Administrator  
Office of Conservation and Coastal Lands

Cc: Chairperson's Office  
Oahu Board Member  
Land Division  
Walter P. Thomson Surveying and Mapping, Inc. 720 Iwilei Rd. P.O. Box  
3351 Honolulu HI 96801